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February 19, 1986

Duane E. Shinnick
Deputy District Attorney
County of San Diego
101 West Broadway, Suite 1440
San Diego, CA 92101

ASSOCIATE MEMBERS

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Dear Mr. Shinnick:

Thank you for allowing the Port of San Diego Ship Repair Association to meet with you and representatives of Southwest Marine and the U.S. Navy ("USN") regarding Notices of Violation concerning asbestos waste. As you know, this issue concerns the industry as a whole.

I have enclosed a letter the Association has sent to Angelo Bellomo, Chief of the Southern Section of the Toxic Substances Control Division, California Department of Health Services. Given the volume of these materials I thought it would be helpful to provide a summary overview of the issues. In addition I have enclosed an EPA Memorandum which we recently received which makes a "Generator Determination" on a similar issue where another toxic waste was removed from a U.S. Naval vessel. The Memorandum is dated July 5, 1985 and the relevant information is on page 3. I have also enclosed another relevant document, the October 30, 1980, Federal Register (45 FR 72024), to which the Memorandum refers.

In essence, the USN has decided that it will no longer manifest wastes generated by its ships which are undergoing repair and alteration work at commercial shipyards, insisting instead that the ship repair contractors or subcontractors ("Contractors") assume the USN's generator duties. This wrongful refusal to comply with California Hazardous Waste Control Law ("HWCL") requirements has created an untenable regulatory and economic dilemma for San Diego Contractors, and has already resulted in the issuance of one Notice of Violation to the USN by the San Diego County Department of Health Services.

In support of its position, the USN contends that it enjoys sovereign immunity from compliance with California hazardous waste regulations for materials not specifically listed as hazardous by federal regulations, e.g. asbestos and bilge water. The USN has also decided that a generator's legal and administrative duties are incompatible with the mobile nature of its vessels, and argues that it is not in any event the generator of hazardous wastes produced by its ships.

Not one of these arguments is correct. As a result of prior inquiries by the Contractors, the California Department of Health Services has already concluded that the USN is the generator of the hazardous wastes produced by Navy ships. It is also clear that the USN has an affirmative statutory obligation to comply with California hazardous waste control requirements and is amenable to injunctive relief and sanctions for its violations of California law. Moreover, there is no legal basis, or compelling practical reason, for exempting the USN from compliance with the HWCL simply because its ships move. In fact, the mobility of Navy ships (and ships in general) makes their regulation all the more imperative. Were the State to exempt from HWCL compliance all ships which use California ports, literally hundreds of waste-generating sites would not be subject to direct State control.

Again, I appreciate your attention to this important issue.

Sincerely, ,



Lee E. Wilson
Chairman, Hazardous Waste Committee

enclosure

cc: Mike Riely
SUPSHIP Council

LEW/tcr

CC: w/o enclosures

Karl Lytz
Herb Engel ✓
John Lamon